IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/07/2004

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.3406 OF 1997

Tvl. Sri Murugan Theatre,
Sathuvachary,
Vellore 632 009. .. Petitioner

-Vs-

1. The Entertainment Tax Officer (DCTO),
Vellore (Rural) Assessment Circle,
Vellore 632 001.

2. The Jt. Commissioner of Commercial
Taxes (R.P),
O/o. The Special Commissioner and
Commissioner of Commercial Taxes,
Chepauk, Chennai 600 005. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioner : Mrs. Chitra Venkataraman

For Respondents : Mrs. Saraswathy Sivaraman Iyer

:J U D G M E N T

This writ petition has been filed for quashing the proceedings of the second respondent in D.Dis JJ2/89973/96 and 89974/96 dated 17.2.199 7 confirming the order of the first respondent in its E.T.No.1/85-86/92-93 dated 13.11.1995.

2. The petitioners run a Cinema Theatre. They are required to pay Entertainment Tax under the Tamil Nadu Entertainments Tax Act, 1939, hereinafter called the Act. Permit in Form IV under the Tamil Nadu Entertainments Tax Rules, 1939 has been issued to them. As per the procedure, the petitioners have to submit weekly returns reporting the payments for each class during the week with proof of payment of tax on such collections. The petitioners claim that they have submitted such weekly returns without any

default. While the matter stood thus, the petitioners were served with show cause notice purporting to be under 7-B of the Act proposing to levy tax and penalty for the year 1992-93. In the said show cause notice, it was indicated that on a few occasions inspections have been made and it was found that some persons had been admitted without ticket or free pass and on the basis of such non-payment of dues it was proposed to levy tax and impose penalty by applying the procedure of best judgment assessment for the whole year. An objection was filed on behalf of the petitioners. However, orders were passed confirming the proposal to levy tax and penalty. Such order having been confirmed in appeal and revision, the writ petition has been filed.

3. The main contention of the petitioner is to the effect that even assuming that on a few occasions when inspection has been made, some persons had been admitted inside the cinema theatre without pass or valid ticket, there was no justification in assuming that such lapses had occurred throughout the year and in levying huge amount as tax and penalty. It is the further contention of the counsel for the petitioner that since penalty had been levied, it can be assumed that the proceedings was one under Section 7-B and not under 7-A of the Act, but, inasmuch as the petitioners have filed weekly returns along with proof of payment of tax, without finalising such returns, there was no occasion to take recourse to Section 7-B, which is applicable only on escaped assessment. Similarly it is contended that the scope for making best judgment assessment as contemplated under Section 7-A(3)was not available, as returns had been admittedly filed and such returns have not been found to be incorrect or incomplete.

4. Learned counsel for the respondents has supported the orders passed by the Departmental authorities.

5. In order to appreciate the contentions raised by the parties, it is necessary to notice the relevant provisions contained in the Act.
Section 4(1) contains the charging section.
Section 7-A relates to Returns and the provisions contained in Section 7-A are quoted hereunder :-
 7-A. Returns.- (1) Every proprietor of an entertainment shall submit such returns relating to payments for admission and all complimentary tickets, or relating to collection of amount for television exhibition as the case may be to such authority, in such manner and within such periods, as may be prescribed.
(2) If the prescribed authority is satisfied that any return submitted under sub-section (1) is correct and complete, it shall assess the proprietor on the basis thereof.
(3) If no return is submitted by the proprietor of the entertainment under sub-section (1) before the date prescribed or if the return submitted by him appears to the prescribed authority to be incorrect or incomplete, the prescribed authority shall, after making such inquiry, as it considers necessary, determine the tax due under Section 4 or section 4-E as the case maybe and assess the proprietor to the best of its judgment:
Provided that before taking action under this sub-section, the proprietor shall be given a reasonable opportunity of proving the correctness and completeness of any return submitted by him or that no return was due from

him.

6. A combined reading of the provisions contained in Section 7-A makes it clear that where returns are filed in the manner and within the prescribed period, the authority is required to find out whether such return is correct and complete. In such event, such authority shall assess the proprietor on the basis thereof. On the other hand if no return has been submitted before the date prescribed, the authority may determine the tax due and assess the proprietor to the best of its judgment. Similar jurisdiction can also be exercised if the authority comes to a conclusion that the returns filed is incorrect or incomplete.

7. On the basis of the aforesaid analysis, the contention of the petitioners is to the effect that, since weekly returns have been filed, the authorities should have examined as to whether the returns for a particular period was correct and complete and if on such examination it was found that the return was incomplete or incorrect, the necessity making best judgment assessment would have arisen as contemplated under Section 7-A(3).

8. The aforesaid contention of the learned counsel for the petitioner is well founded by the decision of this Court reported in 1984 Vol.1 WLR (Suppl)113 (SELLAKUMAR TALKIES v. THE BOARD OF REVENUE (CT), MADRAS 5 AND ANOTHER). Similar views have been expressed in 1964(1) MLJ 394 (KAMALAMMAL v. BOARD OF REVENUE BY THE COMMISSIONER OF COMMERCIAL TAXES, MADRAS AND ANOTHER).

9. The allied contention of the learned counsel for the petitioner is to the effect that before initiating the process of assessment, the authorities should not have invoked jurisdiction under Section 7-B, as the question of escaped assessment would not have arisen until there was an

assessment. When the weekly returns have been filed and had not been finalised, there was no occasion to invoke jurisdiction under Section 7-B of the Act.

10. A bare perusal of the scheme of the Act fortify the submissions made by the learned counsel for the petitioner. Law appears to be well settled that if the returns are filed, before proceeding to determine the correctness of the returns, the authorities cannot invoke the provisions relating to escaped assessment.

11. A similar question has been decided by the Orissa High Court in Vol.68 STC 25 (JAYANARAYAN KEDARNATH AND ANOTHER v. SALES TAX OFFICER, CUTTACK I WEST CIRCLE) and by the Supreme Court expressed in Vol.25 STC 74 (ADDL. ASSISTANT COMMISIONER OF SALES TAX, INDORE REGION, INDORE v. FIRM JAGMOHANDAS VIJAY KUMAR, while dealing with the similar provisions contained in respective State Sales Tax Acts. The ratio of the aforesaid decisions are applicable.

12. For the aforesaid reasons, the writ petition is allowed and the impugned orders are quashed. It is made clear that the authorities are now required to examine the correctness of the various returns filed by the petitioners for the particular period and thereafter deal with the matter in accordance with law keeping in view the principles enunciated in 1984 Vol.1 WLR (Suppl)113 and 1964(1) MLJ 394 (cited supra). No costs.

Index : Yes
Internet: Yes

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To

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